

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

#10084-003
CHARLENE SCHMITZ,
F.C.I. TALLAHASSEE Plaintiff,
501 CAPITAL CIRCLE
TALLAHASSEE, FL. 32301
v.

UNITED STATES DEPARTMENT
OF JUSTICE OFFICE OF INFOR-
MATION POLICY,

Defendant.

Case: 1:12-cv-00649
Assigned To : Sullivan, Emmet G
Assign. Date : 4/25/2012
Description: FOIA/Privacy Act

COMPLAINT UNDER THE FREEDOM OF INFORMATION ACT

NOW COMES Plaintiff, Charlene Schmitz (hereinafter "Schmitz"),
as a pro se prisoner, alleging as follows:

INTRODUCTION

1. This is an action under the Freedom of Information Act
("FOIA"), 5 U.S.C. §552, et seq., brought to seek access to
records as follows:

(a) Records pertaining to the Plaintiff, Charlene Schmitz,
from Criminal Case No. 1:07-cr-00365-KD-N, in the United States
District Court, Southern District of Alabama, Southern Division;
and (b) Records pertaining to Richard Brooks Nelson, Criminal
Case No. 1:07-cr-00281-CG-B-1 in the United States District Court,
Southern District of Alabama, Southern Division.

2. Of particular interest in Case No. 1:07-00365-KD-N is: (1)
the criminal complaint lodged against Schmitz; (2) the affidavit
regarding loss for restitution signed by Donna Marks; and (3)
the video surveillance tape seized from Leroy High School during
investigation. This videotape contained impeachment evidence
vital to Schmitz's defense.

RECEIVED

APR - 9 2012

3. Of particular interest in Case No. 1:07-cr-00281-CG-B-1 is: (1) the "internal" docket (the one utilized by the Court) in the Nelson case; (2) Motion to Dismiss the Indictment; (3) Motion for Judgement of Acquittal; (4) Court Order Denying Motion to Dismiss Indictment; and (5) Court Order Denying Motion for Judgement of Acquittal. Judge Granade's judicial decision in regards to Nelson's indictment, and §2422(b) indictments in general, was previously a public document, but is now "hidden" from the public, in violation of the Constitution.

4. It is recognized that public interest in disclosure under FOIA is greatest when there is evidence of governmental wrongdoing. See **Lissener v. United States Custom Service**, 241 F 3d 1220 (9th Cir. 2001).

THE PARTIES

5. Charlene Schmitz is a prisoner who is presently incarcerated at the Federal Correctional Institution, 501 Capital Circle, NE, Tallahassee, Florida 32301.

6. Defendant United States Department of Justice Office of Information Policy is a department within the executive branch of the United States government. Defendant is an agency of the United States within the meaning of 5 U.S.C. §552(f)(1).

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over this action and personal jurisdiction over defendant pursuant to 5 U.S.C. §§ 552(a)(4)(B) and 552(a)(6)(E)(iii). This Court also has jurisdiction pursuant to 28 U.S.C. §1331 and 5 U.S.C. §§ 701-706.

8. Venue is premised on defendant's location in Washington, D.C., and is proper in this district under 5 U.S.C. §552(a)(4)(B).

FIRST CAUSE OF ACTION

9. Plaintiff Schmitz alleges it is a violation of FOIA for defendant's failure to have promptly made available these records requested by her.

10. Defendant's failure to have promptly made available and to have released these requested records in a timely fashion violates FOIA, 5 U.S.C. §552(a)(6)(E) and §552(a)(3)(A).

SECOND CAUSE OF ACTION

11. Plaintiff Schmitz alleges that she also should have been provided with a Vaughn Index when defendant failed to provide her with the requested records from her case. See **Vaughn v. Rosen**, 484 F.2d 820 (D.C. Cir. 1973).

FACTS

12. In 2008, Plaintiff Schmitz was the defendant in a criminal trial in the Southern District Court of Alabama, in Case No. 1:07-cr-00365-KD-N. Before trial, Schmitz's trial attorney requested from federal prosecutors a videotape containing evidence favorable to the defense. This videotape was confiscated from Leroy High School by local authorities during the investigation from which the federal charges stemmed.

13. Richard Brooks Nelson was also tried by jury in the Southern District of Alabama, Southern Division, for an unrelated §2422(b) violation. Nelson's attorney filed a motion with the court claiming that Nelson's indictment was defective on specific grounds. The Court found that the indictment was not defective on those grounds, and found in general that an indictment without such specificity would, however, be a defective indictment.

14. This judicial decision by Judge Granade disappeared from

LEXISNEXIS and Nelson's docket (the one accessible to the public) in 2009, after Schmitz began searching caselaw by using the prison's newly-installed electronic library system. Since that time, she has diligently attempted to view and obtain these public records from Nelson's case.

15. In order to be constitutionally sound, a federal criminal trial must be open to the public. This open policy includes the right to view and obtain public judicial decisions made by the trial court. Likewise, public documents cannot be hidden from another defendant to prevent her from utilizing that caselaw during litigation.

16. The Constitution guarantees public access to public trial records.

17. Plaintiff Schmitz has exhausted her administrative remedies.

RELIEF REQUESTED


WHEREFORE, Plaintiff Schmitz respectfully requests that this Court:

(a) Order that defendant promptly release all documents from Plaintiff Schmitz's case (1:07-00365-KD-N), including those that were listed in the Request previously filed by the Plaintiff; and

(b) Order that the defendant release the documents from the case of Richard Brooks Nelson (1:07-cr-00281-CG-B-1) that has previously been requested by Plaintiff Schmitz through FOIA Request.

Date: April 5, 2012

Respectfully submitted,



#10084-003

FCI Tallahassee

501 Capital Circle, NE

Tallahassee, Florida 32301

CERTIFICATE OF SERVICE

This is to certify that I have served a true and correct copy of the foregoing:

AFFIDAVIT OF POVERTY & MOTION TO PROCEED IN FORMA PAUPERIS

and

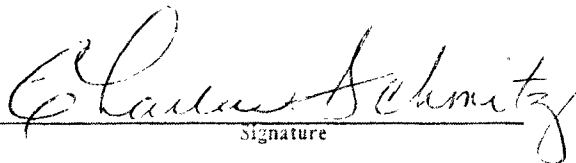
FINANCIAL CERTIFICATE

"COMPLAINT UNDER THE FREEDOM OF INFORMATION ACT"

upon the following addresses, by placing same in a sealed envelope, bearing sufficient postage for delivery via the United States Postal Service, to:

Clerk of Court
United States Courthouse
333 Constitution Ave., NW, Room 1225
Washington, D.C. 20001

and deposited it in the postal box provided for inmates on the grounds of the Federal Correctional Institution, Tallahassee, Florida, 32301, on this 5th day of April, 2012.


Signature

Register No. 10084-003
Federal Correctional Institution
501 Capital Circle N.E.
Tallahassee, Florida 32301

Litigation is deemed FILED at the time it was delivered to prison authorities.
See Houston v. Lack, 487 US 266, 101 L Ed 2d 245, 108 S Ct 2379 (1988).

